

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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THOMAS GESUALDI, LOUIS BISIGNANO,
ANTHONY D'AQUILA, MICHAEL O'TOOLE,
MICHAEL BOURGAL, FRANK H. FINKEL,
JOSEPH A. FERRARA, SR., MARC HERBST,
DENISE RICHARDSON, and THOMAS
CORBETT as Trustees and fiduciaries of the Local
282 Welfare Trust Fund, the Local 282 Pension
Trust Fund, the Local 282 Annuity Trust Fund, the
Local 282 Job Training Trust Fund, and the Local
282 Vacation and Sick Leave Trust Fund,

Plaintiffs,

-against-

ORDER

14 CV 7291 (DRH) (AKT)

PALADIN CONSTRUCTION CORP. and ALLEN
JENKINS d/b/a PALADIN CONSTRUCTION
CORP.,

Defendants.

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HURLEY, Senior District Judge:

Plaintiffs Thomas Gesualdi, Louis Bisignano, Anthony D'Aquila, Michael O'Toole, Frank H. Finkel, Joseph A. Ferrara, Sr., Marc Herbst, Michael Bourgal, Denise Richardson and Thomas F. Corbett, as Trustees and Fiduciaries ("plaintiffs") of the Local 282 Welfare, Pension, Annuity, Job Training, and Vacation and Sick Leave Trust Funds (collectively, the "Funds"), commenced this action against defendants Paladin Construction Corporation and Allen Jenkins d/b/a Paladin Construction Corporation ("defendants") pursuant to Section 301 of the Labor Management Relations Act and Sections 502(g)(2) and 515 of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §§ 1132(g)(2) and 1145. Plaintiffs seek an order directing defendants to pay any delinquent contributions due to plaintiffs under the governing collective bargaining agreement. Plaintiffs base their claims on the findings of two audits – Audit

#13-0638 and Audit #14-0878-E1.

After the defendants' default was noted by the Clerk of Court pursuant to Federal Rule of Civil Procedure ("Rule") 55(a), plaintiffs moved for entry of a default judgment under Rule 55(b). On April 6, 2015, this motion was referred to United States Magistrate Judge A. Kathleen Tomlinson to issue a Report and Recommendation as to whether plaintiffs have demonstrated that the allegations in the Complaint establish the defendants' liability such that the motion for default judgment should be granted, and if so, to determine the appropriate amount of damages, costs, and/or fees, if any, to be awarded.

On February 18, 2016, Judge Tomlinson issued a Report and Recommendation which recommended that a default judgment be entered against the defendants. Specifically, Judge Tomlinson's Order set forth that the following damages be awarded:

- (1) \$260.00 in unpaid contributions pursuant to Audit #13-0638;
- (2) \$70,732.48 in estimated owed contributions pursuant to Audit #14-0878-E1;
- (3) interest as follows: (i) \$13,223.01 in interest on estimated contributions; (ii) \$128.70 in interest pursuant to Audit #13-0638; (iii) additional interest through the entry of judgment calculated based on the per diem amount of (1) \$34.88 for unpaid contributions arising under estimated Audit #14-0878-E1 and (2) \$0.13 for unpaid contributions arising under Audit #13-0638, running from March 21, 2015 through the entry of judgment;
- (4) \$14,276.19 in liquidated damages;
- (5) \$1,594.90 in audit fees;
- (6) \$4,705.50 in attorneys' fees; and
- (7) \$838.38 in costs incurred.

More than fourteen days have elapsed since service of the Report and Recommendation and no

party has filed an objection.

Pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the Report and Recommendation for clear error, and finding none, now concurs in both its reasoning and its result. Therefore, the Court adopts the Report and Recommendation of Judge Tomlinson as is set forth therein. Accordingly, the Court hereby directs that default judgment be entered in favor of plaintiffs and against defendants in the amounts delineated above. Upon entry of judgment, the Clerk of the Court is directed to close this case.

SO ORDERED.

Dated: Central Islip, New York
March 11, 2016

_____/s/
Denis R. Hurley
United States District Judge